

- E3
cont.
77. Isolated antibodies obtainable by immunizing animals with the isolated peptide according to claim 64 or obtainable by using hybridoma technology.
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REMARKS

Applicants wish to thank the examiner - Dr. Amy DeCloux - for granting the §119 priority claim and for initialing the PTO Form 1449 and providing a copy, thereof, as requested in applicants' reply filed August 5, 2002.

A response to the Notice to Comply, attached to the Office Action, is filed concurrently herewith.

The specification is amended, hereby, to insert sequence identifiers. The requisite marked up version of the amendment is attached, hereto, on a separate page.

Claims 64-77, presented hereby in place of claims 43-63, are pending.

Claims 64-77 represent claims 43-50, revised to more clearly define the subject matter of the invention and, thereby, address the rejections of record as explained in detail, below.

Claims 43, 44, and 50 were rejected under 35 USC 101 for allegedly claiming non-statutory subject matter. Reconsideration is requested, in that the present claims recite "isolated peptide" and "Isolated antibodies," in accordance with the Examiner's suggestion for overcoming the rejection. Applicants wish to thank the Examiner for the timely suggestion.

Claims 43, 45, 48-51, 56, and 62 were rejected under 35 USC 102(e) as being allegedly anticipated by US 5,643,783 (Olsen). Reconsideration is requested.

First, the rejection as applied against claims 51, 56, and 62 is rendered moot by cancellation of these claims.

Secondly, according to the statement of rejection, the peptide defined in the rejected claims is fully met by Olsen, the statement explicitly relying on passages in the cited reference appearing at column 2, lines 1-2, and at column 12, lines 1-67. Reconsideration is requested because the statement of rejection has failed to make a prima facie showing of anticipation, i.e., the statement of rejection fails to show that the invention defined in the rejected claims is "described" in Olsen, as required under §102(e).

For anticipation under § 102 to exist, each and every claim limitation, as arranged in the claim, must be found in a single prior art reference. *Jamesbury Corp. v. Litton Industrial Products, Inc.*, 225 USPQ 253 (Fed. Cir. 1985). The absence from a prior art reference of a single claim limitation negates anticipation. *Kolster Speedsteel A B v. Crucible Inc.*, 230 USPQ 81 (Fed. Cir. 1986). A reference that discloses "substantially the same invention" is not an anticipation. *Jamesbury Corp.* To anticipate the claim, each claim limitation must "*identically* appear" in the reference disclosure. *Gechter v. Davidson*, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997) (*emphasis added*). To be novelty defeating, a reference must put the public in possession of the identical invention claimed. *In re Donahue*, 226 USPQ 619 (Fed. Cir. 1985).

The rejected claims define a peptide by reciting a chain (i.e., "sequence") of 55 explicitly identified amino-acid residues. An explicit description of each and every one of the 55 amino acid residues, as sequentially arranged in the rejected claims, is not found anywhere in the specified passages of Olsen relied upon to reject the claims. Since the rejection fails to find each and every one of the explicitly identified amino acids, as sequentially arranged in the rejected claims, in Olsen, anticipation has not been shown to exist, *Jamesbury Corp., supra*, and withdrawal of the rejection is in order.

Additionally, the rejection under §102(e) cannot be applied against present claims 64-77, for the same reasons set forth above in connection with the alleged anticipation of the rejected claims.

Moreover, the rejection under §102(e) is not applicable against the present claims, in that the present claims are literally limited to a peptide having a sequence of *no more than 55* amino acids. That is, the present claims define a peptide "consisting of" the recited sequence of 55 amino acids, which 55-amino-acid sequence is either unmodified, or modified by amidation, acetylation, phosphorylation, or glycosylation (i.e., the recited "derivative of the isolated peptide").

On the other hand, the statement of rejection implicitly admits that, whatever description is relied on in Olsen, reliance is based on the "open [ended] language of the instant [rejected] claims" (Office action page 3, last paragraph). In other words, the statement of rejection relies on Olsen's description of an amino acid sequence having more than 55 amino acids in order to reject the claims. Accordingly, a limitation on the present claims - an amino acid sequence no more than 55 amino

acids long - being absent from Olsen, any alleged anticipation of the present claims based on Olsen is negated. *Kolster Speedsteel A B, supra*.

The rejection of claims 51-62 under 35 USC 112, first paragraph, is rendered moot as these claims are cancelled by the instant amendment.

Claims 44-62 were rejected under 35 USC 112, second paragraph, for allegedly being indefinite. Reconsideration is requested in view of the instant amendment.

First, the rejection as applied against claims 51-62 is rendered moot by cancellation of these claims, hereby.

Secondly, according to the statement of rejection, the claims are considered indefinite because it is allegedly unclear whether "derivative" means either (1) SEQ ID NO: 1 modified by amidation acetylation, phosphorylation, or glycosylation or (2) a derivative of SEQ ID NO: 1, which *derivative* is amidated, acetylated, phosphorylated, or glycosylated.

By the instant amendment, any alleged confusion in connection with the recited "derivative" is removed. That is, the present claims define the "peptide" as either the recited unmodified sequence, i.e., SEQ ID NO: 1, or the recited sequence modified by amidation, acetylation, phosphorylation, or glycosylation.

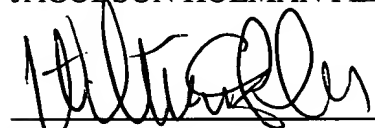
The rejected claims were, further, considered indefinite, it be allegedly unclear if closed or open language is intended by defining the peptide as "having" the recited amino acid sequence. In this respect, the rejection is overcome by the instant amendment, being that the present claims recite "consisting of" as the transitional phrase.

Favorable action is requested.

Respectfully submitted,

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Marked up version of amendments

IN THE SPECIFICATION

Rewrite page 3, paragraph 1, as:

Val-Ala-Leu-Asn-Ser-Pro-Leu-Ser-Gly-Gly-Met-Arg-Gly-Ile-Arg-Gly-Ala-Asp-
Phe-Gln-Cys-Phe-Gln-Gln-Ala-Arg-Ala-Val-Gly-Leu-Ala-Gly-Thr-Phe-Arg-
Ala-Phe-Leu-Ser-Ser-Arg-Leu-Gln-Asp-Leu-Tyr-Ser-Ile-Val-Arg-Arg-Ala-Asp-
Arg-Ala-Ala-Val-Pro-Ile-Val-Asn-Leu-Lys-Asp-Glu-Leu-Leu-Phe-Pro-Ser-Trp-
Glu-Ala-Leu-Phe-Ser-Gly-Ser-Glu-Gly-Pro-Leu-Lys-Pro-Gly-Ala-Arg-Ile-Phe-
Ser-Phe-Asp-Gly-Lys-Asp-Val-Leu-Arg-His-Pro-Thr-Trp-Pro-Gln-Lys-Ser-
Val-Trp-His-Gly-Ser-Asp-Pro-Asn-Gly-Arg-Arg-Leu-Thr-Glu-Ser-Tyr-Cys-
Glu-Thr-Trp-Arg-Thr-Glu-Ala-Pro-Ser-Ala-Thr-Gly-Gln-Ala-Ser-Ser-Leu-Leu-
Gly-Gly-Arg-Leu-Leu-Gly-Gln-Ser-Ala-Ala-Ser-Cys-His-His-Ala-Tyr-Ile-Val-
Leu-Cys-Ile-Glu-Asn-Ser-Phe-Met-Thr-Ala-Ser (SEQ ID NO: 1).

Rewrite page 10, penultimate paragraph, as:

Val-Ala-Leu-Asn-Ser-Pro-Leu-Ser-Gly-Gly-Met-Arg-Gly-Ile-Arg-Gly-Ala-Asp-
Phe-Gln-Xxx-Phe-Gln-Gln-Ala-Arg-Ala-Val-Gly-Leu-Ala-Gly-Thr-Phe-Arg-
Ala-Phe-Leu-Ser-Ser-Arg-Leu-Gln-Asp-Leu-Tyr-Ser-Ile-Val-Arg-Arg-Ala-Asp-
Arg-Ala-Ala-Val-Pro-Ile-Val (SEQ ID NO: 2).